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 ORTHO-MCNEIL PHARMACEUTICAL, INC.
 and MCKESSON CORPORATION

UNITED STATES DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA
 SAN FRANCISCO DIVISION

BZ

CHOLE ALLEN, an individual; LISA
 ANDERSON, an individual; LAUREN
 ANDREAS, an individual; BRANDI
 BAILEY, an individual; COENEKA BALL,
 an individual; MONTOYA BALL, an
 individual; TIESHIA BAMSEY, an
 individual; TERTULIETTE BELIARD, an
 individual; TAMELA BLACKMAN, an
 individual; DELORES BONNER, an
 individual; JASMINE BOX, a minor, by
 and through her guardian ad litem
 SCHARLETTA BOX; LACI BRIGNAC,
 an individual; JERHONDA BROWN, an
 individual; DAMITA BYNUM, an
 individual; QUIEONNA CARPENTER, an
 individual; ERIKA CARR, an individual;
 WENDY CARRIGAN, an individual; M.
 CHARLOTTE CHEATHAM, an
 individual; SHERIE COLLINS, an
 individual; KERRI COOPER, an individual;
 TERRY COREAU, an individual;
 MARANDA CRUMEDY, an individual;
 CENNIE DARBY, an individual; JOEY
 DAVIS, an individual; SUSAN DOMAN,
 an individual; ALCOLA EDWARDS, an
 individual; SARAH EVANS, an individual;
 TRYSHA GRAVES, an individual;
 ALEJANDRINA GARZA, an individual;
 GERALDINE GILLIGAN, an individual;
 RHONDA GRANJA, an individual;
 STACY GREENWOOD, an individual;
 REBECCA GRICE, an individual; SARAH
 GRIFFITH, an individual; DOROTHY
 GURERRIER, an individual; TAMIERA

Case No.

07 3980
DEFENDANTS' ANSWER TO
PLAINTIFFS' FIRST AMENDED
COMPLAINT; DEMAND FOR JURY
TRIAL

1 HARRIS, an individual; MICHELE
 2 HELKENN, an individual; NADIA
 3 HERNANDEZ, an individual; COURTNEY
 4 HEWETT, a minor by and through her
 5 guardian ad litem, ANNETTE HEWETT;
 6 ROCKENIA HUDSON, an individual;
 7 JENNIFER JACKSON, an individual;
 8 CLARICE JENKINS, an individual;
 9 KRYSTAL JENNINGS, an individual;
 10 TIFFANY JENSEN (PENKE), an
 11 individual; CANDIS JOHNSON, an
 12 individual; DOMONIQUE JOHNSON, an
 13 individual; JANNOEL JOHNSON, an
 14 individual; MICHELLE JOHNSON, an
 15 individual; NICOLE JOHNSON, an
 16 individual; TAMMY JONES, an individual;
 17 TIARA JOYNER, an individual;
 18 AMANDA KING, an individual; YANA
 19 KRISHTAL, an individual; VALERIE
 20 LANE, a minor by and through her guardian
 21 ad litem, VIVIAN LANE; DANA LEWIS,
 22 an individual; MARY LEWIS, an
 23 individual; DARCI LIDSTER, an
 24 individual; MICHELLE LOCKET, an
 25 individual; DENISE LUCERO, an
 26 individual; VIRGINIA MANGANO, an
 27 individual; TRACI MARGIOTTA, an
 28 individual; LENIKA MCNAIR, an
 individual; JUDY MICKENS, an
 individual; ARIES MITCHELL, an
 individual; TOSHEA MORGAN, an
 individual; STAPHANIE MULLINGS, an
 individual; TYREE NEAL, an individual;
 JULIANA PAIZ, an individual; ERINA
 PARKER, an individual; ERIKA PENA, an
 individual; JENNIFER PROCH, an
 individual; TRACY RILES, an individual;
 URSHALA RIVERS, an individual;
 MARGARET ROGERS, an individual;
 TAMANISHA RUBIN, an individual;
 CARRIE RYAN, an individual; IESHIA
 SCOTT, an individual; REBECCA
 SHERRY, an individual; TONYA SIMMS,
 an individual; JESSICA SMITH, an
 individual; LINDA TANNER, an
 individual; CLEO THOMPSON, an
 individual; CRYSTAL WALDO, an
 individual; KRISTEN WALKER, an
 individual; TIFFANY WALKER, an
 individual; NIKKIA MARTIN, a minor by
 and through her guardian ad litem, LAURA
 WASHINGTON; JOYCE WATERS, an
 individual; CRYSTAL WEAVER, an
 individual; DAWN WHITE, an individual;
 MARIE WILLIAMS, an individual;

1 SHERITA WILLIAMS, an individual;
2 ROBBIN WINTERS, an individual;
3 CATHY WOOD, an individual; ROMONA
4 WRIGHT, an individual,

Plaintiff,

v.

5 ORTHO-MCNEIL PHARMACEUTICAL,
6 INC., a Delaware Corporation;
7 MCKESSON CORP and DOES 1-500,
inclusive,

Defendants.

8
9
10 Defendants Ortho-McNeil Pharmaceutical, Inc. ("OMP") and McKesson
11 Corporation ("McKesson") (collectively "Defendants") by and through counsel, hereby
12 respond to the allegations set forth in plaintiffs' First Amended Complaint ("FAC") as
13 follows:
14

15 ANSWER TO INTRODUCTION

16 1. Defendants are without knowledge or information sufficient to form a
17 belief as to plaintiffs' allegations that they used ORTHO EVRA®. Defendants deny the
18 remaining allegations contained in paragraph 1 of plaintiffs' FAC.

19 2. Defendants admit that defendant OMP manufactured, advertised, promoted,
20 marketed, sold and distributed ORTHO EVRA®. Defendants deny the remaining
21 allegations contained in paragraph 2 of plaintiffs' FAC.

22 3. Defendants admit that defendant McKesson is a non-exclusive distributor
23 of ORTHO EVRA® and has its principal place of business in San Francisco, California.
24 Defendants deny the remaining allegations contained in paragraph 3 of plaintiffs' FAC.

25 4. Defendants admit that on the ORTHO EVRA® Web site, it states that:
26 "The transdermal -- or 'through the skin' -- weekly birth control patch prevents
27 pregnancy by delivering continuous levels of the hormones norelgestromin and ethinyl
28 estradiol (progestin and estrogen, respectively) through the skin and into the

1 bloodstream." Defendants admit that the FDA approved the use of ORTHO EVRA® for
2 the prevention of pregnancy in November 2001. Defendants further admit that the FDA's
3 publications state what they state. Defendants deny the remaining allegations contained
4 in paragraph 4 of plaintiffs' FAC.

5 **ANSWER TO JURISDICTION AND VENUE**

6 5. Paragraph 5 of plaintiffs' FAC contains legal conclusions to which no
7 response is required.

8 6. Defendants admit that defendant OMP is a Delaware corporation with its
9 principal place of business in New Jersey, and defendant McKesson is a Delaware
10 corporation with its principal place of business in California. Defendants deny the
11 remaining allegations contained in paragraph 6 of plaintiffs' FAC.

12 7. Defendants admit that defendant McKesson has its principal place of
13 business in San Francisco, California. Defendants deny the remaining allegations
14 contained in paragraph 7 of plaintiffs' FAC.

15 8. Defendants admit that defendant McKesson has its principal place of
16 business in San Francisco, California. Defendants deny the remaining allegations
17 contained in paragraph 8 of plaintiffs' FAC.

18 9. Defendants are without knowledge or information sufficient to form a
19 belief as to the allegations contained in paragraph 9 of plaintiffs' FAC.

20 **ANSWER TO PLAINTIFFS**

21 10. Defendants are without knowledge or information sufficient to form a
22 belief as to where plaintiff resides or plaintiff's allegations that she was prescribed
23 ORTHO EVRA®. Defendants deny the remaining allegations contained in paragraph 10
24 of plaintiffs' FAC.

25 11. Defendants are without knowledge or information sufficient to form a
26 belief as to where plaintiff resides or plaintiff's allegations that she was prescribed
27 ORTHO EVRA®. Defendants deny the remaining allegations contained in paragraph 11
28 of plaintiffs' FAC.

1 12. Defendants are without knowledge or information sufficient to form a
2 belief as to where plaintiff resides or plaintiff's allegations that she was prescribed
3 ORTHO EVRA®. Defendants deny the remaining allegations contained in paragraph 12
4 of plaintiffs' FAC.

5 13. Defendants are without knowledge or information sufficient to form a
6 belief as to where plaintiff resides or plaintiff's allegations that she was prescribed
7 ORTHO EVRA®. Defendants deny the remaining allegations contained in paragraph 13
8 of plaintiffs' FAC.

9 14. Defendants are without knowledge or information sufficient to form a
10 belief as to where plaintiff resides or plaintiff's allegations that she was prescribed
11 ORTHO EVRA®. Defendants deny the remaining allegations contained in paragraph 14
12 of plaintiffs' FAC.

13 15. Defendants are without knowledge or information sufficient to form a
14 belief as to where plaintiff resides or plaintiff's allegations that she was prescribed
15 ORTHO EVRA®. Defendants deny the remaining allegations contained in paragraph 15
16 of plaintiffs' FAC.

17 16. Defendants are without knowledge or information sufficient to form a
18 belief as to where plaintiff resides or plaintiff's allegations that she was prescribed
19 ORTHO EVRA®. Defendants deny the remaining allegations contained in paragraph 16
20 of plaintiffs' FAC.

21 17. Defendants are without knowledge or information sufficient to form a
22 belief as to where plaintiff resides or plaintiff's allegations that she was prescribed
23 ORTHO EVRA®. Defendants deny the remaining allegations contained in paragraph 17
24 of plaintiffs' FAC.

25 18. Defendants are without knowledge or information sufficient to form a
26 belief as to where plaintiff resides or plaintiff's allegations that she was prescribed
27 ORTHO EVRA®. Defendants deny the remaining allegations contained in paragraph 18
28 of plaintiffs' FAC.

1 19. Defendants are without knowledge or information sufficient to form a
2 belief as to where plaintiff resides or plaintiff's allegations that she was prescribed
3 ORTHO EVRA®. Defendants deny the remaining allegations contained in paragraph 19
4 of plaintiffs' FAC.

5 20. Defendants are without knowledge or information sufficient to form a
6 belief as to where plaintiff resides or plaintiff's allegations that she was prescribed
7 ORTHO EVRA®. Defendants deny the remaining allegations contained in paragraph 20
8 of plaintiffs' FAC.

9 21. Defendants are without knowledge or information sufficient to form a
10 belief as to where plaintiff resides or plaintiff's allegations that she was prescribed
11 ORTHO EVRA®. Defendants deny the remaining allegations contained in paragraph 21
12 of plaintiffs' FAC.

13 22. Defendants are without knowledge or information sufficient to form a
14 belief as to where plaintiff resides or plaintiff's allegations that she was prescribed
15 ORTHO EVRA®. Defendants deny the remaining allegations contained in paragraph 22
16 of plaintiffs' FAC.

17 23. Defendants are without knowledge or information sufficient to form a
18 belief as to where plaintiff resides or plaintiff's allegations that she was prescribed
19 ORTHO EVRA®. Defendants deny the remaining allegations contained in paragraph 23
20 of plaintiffs' FAC.

21 24. Defendants are without knowledge or information sufficient to form a
22 belief as to where plaintiff resides or plaintiff's allegations that she was prescribed
23 ORTHO EVRA®. Defendants deny the remaining allegations contained in paragraph 24
24 of plaintiffs' FAC.

25 25. Defendants are without knowledge or information sufficient to form a
26 belief as to where plaintiff resides or plaintiff's allegations that she was prescribed
27 ORTHO EVRA®. Defendants deny the remaining allegations contained in paragraph 25
28 of plaintiffs' FAC.

1 26. Defendants are without knowledge or information sufficient to form a
2 belief as to where plaintiff resides or plaintiff's allegations that she was prescribed
3 ORTHO EVRA®. Defendants deny the remaining allegations contained in paragraph 26
4 of plaintiffs' FAC.

5 27. Defendants are without knowledge or information sufficient to form a
6 belief as to where plaintiff resides or plaintiff's allegations that she was prescribed
7 ORTHO EVRA®. Defendants deny the remaining allegations contained in paragraph 27
8 of plaintiffs' FAC.

9 28. Defendants are without knowledge or information sufficient to form a
10 belief as to where plaintiff resides or plaintiff's allegations that she was prescribed
11 ORTHO EVRA®. Defendants deny the remaining allegations contained in paragraph 28
12 of plaintiffs' FAC.

13 29. Defendants are without knowledge or information sufficient to form a
14 belief as to where plaintiff resides or plaintiff's allegations that she was prescribed
15 ORTHO EVRA®. Defendants deny the remaining allegations contained in paragraph 29
16 of plaintiffs' FAC.

17 30. Defendants are without knowledge or information sufficient to form a
18 belief as to where plaintiff resides or plaintiff's allegations that she was prescribed
19 ORTHO EVRA®. Defendants deny the remaining allegations contained in paragraph 30
20 of plaintiffs' FAC.

21 31. Defendants are without knowledge or information sufficient to form a
22 belief as to where plaintiff resides or plaintiff's allegations that she was prescribed
23 ORTHO EVRA®. Defendants deny the remaining allegations contained in paragraph 31
24 of plaintiffs' FAC.

25 32. Defendants are without knowledge or information sufficient to form a
26 belief as to where plaintiff resides or plaintiff's allegations that she was prescribed
27 ORTHO EVRA®. Defendants deny the remaining allegations contained in paragraph 32
28 of plaintiffs' FAC.

1 33. Defendants are without knowledge or information sufficient to form a
2 belief as to where plaintiff resides or plaintiff's allegations that she was prescribed
3 ORTHO EVRA®. Defendants deny the remaining allegations contained in paragraph 33
4 of plaintiffs' FAC.

5 34. Defendants are without knowledge or information sufficient to form a
6 belief as to where plaintiff resides or plaintiff's allegations that she was prescribed
7 ORTHO EVRA®. Defendants deny the remaining allegations contained in paragraph 34
8 of plaintiffs' FAC.

9 35. Defendants are without knowledge or information sufficient to form a
10 belief as to where plaintiff resides or plaintiff's allegations that she was prescribed
11 ORTHO EVRA®. Defendants deny the remaining allegations contained in paragraph 35
12 of plaintiffs' FAC.

13 36. Defendants are without knowledge or information sufficient to form a
14 belief as to where plaintiff resides or plaintiff's allegations that she was prescribed
15 ORTHO EVRA®. Defendants deny the remaining allegations contained in paragraph 36
16 of plaintiffs' FAC.

17 37. Defendants are without knowledge or information sufficient to form a
18 belief as to where plaintiff resides or plaintiff's allegations that she was prescribed
19 ORTHO EVRA®. Defendants deny the remaining allegations contained in paragraph 37
20 of plaintiffs' FAC.

21 38. Defendants are without knowledge or information sufficient to form a
22 belief as to where plaintiff resides or plaintiff's allegations that she was prescribed
23 ORTHO EVRA®. Defendants deny the remaining allegations contained in paragraph 38
24 of plaintiffs' FAC.

25 39. Defendants are without knowledge or information sufficient to form a
26 belief as to where plaintiff resides or plaintiff's allegations that she was prescribed
27 ORTHO EVRA®. Defendants deny the remaining allegations contained in paragraph 39
28 of plaintiffs' FAC.

1 40. Defendants are without knowledge or information sufficient to form a
2 belief as to where plaintiff resides or plaintiff's allegations that she was prescribed
3 ORTHO EVRA®. Defendants deny the remaining allegations contained in paragraph 40
4 of plaintiffs' FAC.

5 41. Defendants are without knowledge or information sufficient to form a
6 belief as to where plaintiff resides or plaintiff's allegations that she was prescribed
7 ORTHO EVRA®. Defendants deny the remaining allegations contained in paragraph 41
8 of plaintiffs' FAC.

9 42. Defendants are without knowledge or information sufficient to form a
10 belief as to where plaintiff resides or plaintiff's allegations that she was prescribed
11 ORTHO EVRA®. Defendants deny the remaining allegations contained in paragraph 42
12 of plaintiffs' FAC.

13 43. Defendants are without knowledge or information sufficient to form a
14 belief as to where plaintiff resides or plaintiff's allegations that she was prescribed
15 ORTHO EVRA®. Defendants deny the remaining allegations contained in paragraph 43
16 of plaintiffs' FAC.

17 44. Defendants are without knowledge or information sufficient to form a
18 belief as to where plaintiff resides or plaintiff's allegations that she was prescribed
19 ORTHO EVRA®. Defendants deny the remaining allegations contained in paragraph 44
20 of plaintiffs' FAC.

21 45. Defendants are without knowledge or information sufficient to form a
22 belief as to where plaintiff resides or plaintiff's allegations that she was prescribed
23 ORTHO EVRA®. Defendants deny the remaining allegations contained in paragraph 45
24 of plaintiffs' FAC.

25 46. Defendants are without knowledge or information sufficient to form a
26 belief as to where plaintiff resides or plaintiff's allegations that she was prescribed
27 ORTHO EVRA®. Defendants deny the remaining allegations contained in paragraph 46
28 of plaintiffs' FAC.

1 47. Defendants are without knowledge or information sufficient to form a
2 belief as to where plaintiff resides or plaintiff's allegations that she was prescribed
3 ORTHO EVRA®. Defendants deny the remaining allegations contained in paragraph 47
4 of plaintiffs' FAC.

5 48. Defendants are without knowledge or information sufficient to form a
6 belief as to where plaintiff resides or plaintiff's allegations that she was prescribed
7 ORTHO EVRA®. Defendants deny the remaining allegations contained in paragraph 48
8 of plaintiffs' FAC.

9 49. Defendants are without knowledge or information sufficient to form a
10 belief as to where plaintiff resides or plaintiff's allegations that she was prescribed
11 ORTHO EVRA®. Defendants deny the remaining allegations contained in paragraph 49
12 of plaintiffs' FAC.

13 50. Defendants are without knowledge or information sufficient to form a
14 belief as to where plaintiff resides or plaintiff's allegations that she was prescribed
15 ORTHO EVRA®. Defendants deny the remaining allegations contained in paragraph 50
16 of plaintiffs' FAC.

17 51. Defendants are without knowledge or information sufficient to form a
18 belief as to where plaintiff resides or plaintiff's allegations that she was prescribed
19 ORTHO EVRA®. Defendants deny the remaining allegations contained in paragraph 51
20 of plaintiffs' FAC.

21 52. Defendants are without knowledge or information sufficient to form a
22 belief as to where plaintiff resides or plaintiff's allegations that she was prescribed
23 ORTHO EVRA®. Defendants deny the remaining allegations contained in paragraph 52
24 of plaintiffs' FAC.

25 53. Defendants are without knowledge or information sufficient to form a
26 belief as to where plaintiff resides or plaintiff's allegations that she was prescribed
27 ORTHO EVRA®. Defendants deny the remaining allegations contained in paragraph 53
28 of plaintiffs' FAC.

1 54. Defendants are without knowledge or information sufficient to form a
2 belief as to where plaintiff resides or plaintiff's allegations that she was prescribed
3 ORTHO EVRA®. Defendants deny the remaining allegations contained in paragraph 54
4 of plaintiffs' FAC.

5 55. Defendants are without knowledge or information sufficient to form a
6 belief as to where plaintiff resides or plaintiff's allegations that she was prescribed
7 ORTHO EVRA®. Defendants deny the remaining allegations contained in paragraph 55
8 of plaintiffs' FAC.

9 56. Defendants are without knowledge or information sufficient to form a
10 belief as to where plaintiff resides or plaintiff's allegations that she was prescribed
11 ORTHO EVRA®. Defendants deny the remaining allegations contained in paragraph 56
12 of plaintiffs' FAC.

13 57. Defendants are without knowledge or information sufficient to form a
14 belief as to where plaintiff resides or plaintiff's allegations that she was prescribed
15 ORTHO EVRA®. Defendants deny the remaining allegations contained in paragraph 57
16 of plaintiffs' FAC.

17 58. Defendants are without knowledge or information sufficient to form a
18 belief as to where plaintiff resides or plaintiff's allegations that she was prescribed
19 ORTHO EVRA®. Defendants deny the remaining allegations contained in paragraph 58
20 of plaintiffs' FAC.

21 59. Defendants are without knowledge or information sufficient to form a
22 belief as to where plaintiff resides or plaintiff's allegations that she was prescribed
23 ORTHO EVRA®. Defendants deny the remaining allegations contained in paragraph 59
24 of plaintiffs' FAC.

25 60. Defendants are without knowledge or information sufficient to form a
26 belief as to where plaintiff resides or plaintiff's allegations that she was prescribed
27 ORTHO EVRA®. Defendants deny the remaining allegations contained in paragraph 60
28 of plaintiffs' FAC.

1 61. Defendants are without knowledge or information sufficient to form a
2 belief as to where plaintiff resides or plaintiff's allegations that she was prescribed
3 ORTHO EVRA®. Defendants deny the remaining allegations contained in paragraph 61
4 of plaintiffs' FAC.

5 62. Defendants are without knowledge or information sufficient to form a
6 belief as to where plaintiff resides or plaintiff's allegations that she was prescribed
7 ORTHO EVRA®. Defendants deny the remaining allegations contained in paragraph 62
8 of plaintiffs' FAC.

9 63. Defendants are without knowledge or information sufficient to form a
10 belief as to where plaintiff resides or plaintiff's allegations that she was prescribed
11 ORTHO EVRA®. Defendants deny the remaining allegations contained in paragraph 63
12 of plaintiffs' FAC.

13 64. Defendants are without knowledge or information sufficient to form a
14 belief as to where plaintiff resides or plaintiff's allegations that she was prescribed
15 ORTHO EVRA®. Defendants deny the remaining allegations contained in paragraph 64
16 of plaintiffs' FAC.

17 65. Defendants are without knowledge or information sufficient to form a
18 belief as to where plaintiff resides or plaintiff's allegations that she was prescribed
19 ORTHO EVRA®. Defendants deny the remaining allegations contained in paragraph 65
20 of plaintiffs' FAC.

21 66. Defendants are without knowledge or information sufficient to form a
22 belief as to where plaintiff resides or plaintiff's allegations that she was prescribed
23 ORTHO EVRA®. Defendants deny the remaining allegations contained in paragraph 66
24 of plaintiffs' FAC.

25 67. Defendants are without knowledge or information sufficient to form a
26 belief as to where plaintiff resides or plaintiff's allegations that she was prescribed
27 ORTHO EVRA®. Defendants deny the remaining allegations contained in paragraph 67
28 of plaintiffs' FAC.

1 68. Defendants are without knowledge or information sufficient to form a
2 belief as to where plaintiff resides or plaintiff's allegations that she was prescribed
3 ORTHO EVRA®. Defendants deny the remaining allegations contained in paragraph 68
4 of plaintiffs' FAC.

5 69. Defendants are without knowledge or information sufficient to form a
6 belief as to where plaintiff resides or plaintiff's allegations that she was prescribed
7 ORTHO EVRA®. Defendants deny the remaining allegations contained in paragraph 69
8 of plaintiffs' FAC.

9 70. Defendants are without knowledge or information sufficient to form a
10 belief as to where plaintiff resides or plaintiff's allegations that she was prescribed
11 ORTHO EVRA®. Defendants deny the remaining allegations contained in paragraph 70
12 of plaintiffs' FAC.

13 71. Defendants are without knowledge or information sufficient to form a
14 belief as to where plaintiff resides or plaintiff's allegations that she was prescribed
15 ORTHO EVRA®. Defendants deny the remaining allegations contained in paragraph 71
16 of plaintiffs' FAC.

17 72. Defendants are without knowledge or information sufficient to form a
18 belief as to where plaintiff resides or plaintiff's allegations that she was prescribed
19 ORTHO EVRA®. Defendants deny the remaining allegations contained in paragraph 72
20 of plaintiffs' FAC.

21 73. Defendants are without knowledge or information sufficient to form a
22 belief as to where plaintiff resides or plaintiff's allegations that she was prescribed
23 ORTHO EVRA®. Defendants deny the remaining allegations contained in paragraph 73
24 of plaintiffs' FAC.

25 74. Defendants are without knowledge or information sufficient to form a
26 belief as to where plaintiff resides or plaintiff's allegations that she was prescribed
27 ORTHO EVRA®. Defendants deny the remaining allegations contained in paragraph 74
28 of plaintiffs' FAC.

1 75. Defendants are without knowledge or information sufficient to form a
2 belief as to where plaintiff resides or plaintiff's allegations that she was prescribed
3 ORTHO EVRA®. Defendants deny the remaining allegations contained in paragraph 75
4 of plaintiffs' FAC.

5 76. Defendants are without knowledge or information sufficient to form a
6 belief as to where plaintiff resides or plaintiff's allegations that she was prescribed
7 ORTHO EVRA®. Defendants deny the remaining allegations contained in paragraph 76
8 of plaintiffs' FAC.

9 77. Defendants are without knowledge or information sufficient to form a
10 belief as to where plaintiff resides or plaintiff's allegations that she was prescribed
11 ORTHO EVRA®. Defendants deny the remaining allegations contained in paragraph 77
12 of plaintiffs' FAC.

13 78. Defendants are without knowledge or information sufficient to form a
14 belief as to where plaintiff resides or plaintiff's allegations that she was prescribed
15 ORTHO EVRA®. Defendants deny the remaining allegations contained in paragraph 78
16 of plaintiffs' FAC.

17 79. Defendants are without knowledge or information sufficient to form a
18 belief as to where plaintiff resides or plaintiff's allegations that she was prescribed
19 ORTHO EVRA®. Defendants deny the remaining allegations contained in paragraph 79
20 of plaintiffs' FAC.

21 80. Defendants are without knowledge or information sufficient to form a
22 belief as to where plaintiff resides or plaintiff's allegations that she was prescribed
23 ORTHO EVRA®. Defendants deny the remaining allegations contained in paragraph 80
24 of plaintiffs' FAC.

25 81. Defendants are without knowledge or information sufficient to form a
26 belief as to where plaintiff resides or plaintiff's allegations that she was prescribed
27 ORTHO EVRA®. Defendants deny the remaining allegations contained in paragraph 81
28 of plaintiffs' FAC.

1 82. Defendants are without knowledge or information sufficient to form a
2 belief as to where plaintiff resides or plaintiff's allegations that she was prescribed
3 ORTHO EVRA®. Defendants deny the remaining allegations contained in paragraph 82
4 of plaintiffs' FAC.

5 83. Defendants are without knowledge or information sufficient to form a
6 belief as to where plaintiff resides or plaintiff's allegations that she was prescribed
7 ORTHO EVRA®. Defendants deny the remaining allegations contained in paragraph 83
8 of plaintiffs' FAC.

9 84. Defendants are without knowledge or information sufficient to form a
10 belief as to where plaintiff resides or plaintiff's allegations that she was prescribed
11 ORTHO EVRA®. Defendants deny the remaining allegations contained in paragraph 84
12 of plaintiffs' FAC.

13 85. Defendants are without knowledge or information sufficient to form a
14 belief as to where plaintiff resides or plaintiff's allegations that she was prescribed
15 ORTHO EVRA®. Defendants deny the remaining allegations contained in paragraph 85
16 of plaintiffs' FAC.

17 86. Defendants are without knowledge or information sufficient to form a
18 belief as to where plaintiff resides or plaintiff's allegations that she was prescribed
19 ORTHO EVRA®. Defendants deny the remaining allegations contained in paragraph 86
20 of plaintiffs' FAC.

21 87. Defendants are without knowledge or information sufficient to form a
22 belief as to where plaintiff resides or plaintiff's allegations that she was prescribed
23 ORTHO EVRA®. Defendants deny the remaining allegations contained in paragraph 87
24 of plaintiffs' FAC.

25 88. Defendants are without knowledge or information sufficient to form a
26 belief as to where plaintiff resides or plaintiff's allegations that she was prescribed
27 ORTHO EVRA®. Defendants deny the remaining allegations contained in paragraph 88
28 of plaintiffs' FAC.

1 89. Defendants are without knowledge or information sufficient to form a
2 belief as to where plaintiff resides or plaintiff's allegations that she was prescribed
3 ORTHO EVRA®. Defendants deny the remaining allegations contained in paragraph 89
4 of plaintiffs' FAC.

5 90. Defendants are without knowledge or information sufficient to form a
6 belief as to where plaintiff resides or plaintiff's allegations that she was prescribed
7 ORTHO EVRA®. Defendants deny the remaining allegations contained in paragraph 90
8 of plaintiffs' FAC.

9 91. Defendants are without knowledge or information sufficient to form a
10 belief as to where plaintiff resides or plaintiff's allegations that she was prescribed
11 ORTHO EVRA®. Defendants deny the remaining allegations contained in paragraph 91
12 of plaintiffs' FAC.

13 92. Defendants are without knowledge or information sufficient to form a
14 belief as to where plaintiff resides or plaintiff's allegations that she was prescribed
15 ORTHO EVRA®. Defendants deny the remaining allegations contained in paragraph 92
16 of plaintiffs' FAC.

17 93. Defendants are without knowledge or information sufficient to form a
18 belief as to where plaintiff resides or plaintiff's allegations that she was prescribed
19 ORTHO EVRA®. Defendants deny the remaining allegations contained in paragraph 93
20 of plaintiffs' FAC.

21 94. Defendants are without knowledge or information sufficient to form a
22 belief as to where plaintiff resides or plaintiff's allegations that she was prescribed
23 ORTHO EVRA®. Defendants deny the remaining allegations contained in paragraph 94
24 of plaintiffs' FAC.

25 95. Defendants are without knowledge or information sufficient to form a
26 belief as to where plaintiff resides or plaintiff's allegations that she was prescribed
27 ORTHO EVRA®. Defendants deny the remaining allegations contained in paragraph 95
28 of plaintiffs' FAC.

1 96. Defendants are without knowledge or information sufficient to form a
2 belief as to where plaintiff resides or plaintiff's allegations that she was prescribed
3 ORTHO EVRA®. Defendants deny the remaining allegations contained in paragraph 96
4 of plaintiffs' FAC.

5 97. Defendants are without knowledge or information sufficient to form a
6 belief as to where plaintiff resides or plaintiff's allegations that she was prescribed
7 ORTHO EVRA®. Defendants deny the remaining allegations contained in paragraph 97
8 of plaintiffs' FAC.

9 98. Defendants are without knowledge or information sufficient to form a
10 belief as to where plaintiff resides or plaintiff's allegations that she was prescribed
11 ORTHO EVRA®. Defendants deny the remaining allegations contained in paragraph 98
12 of plaintiffs' FAC.

13 99. Defendants are without knowledge or information sufficient to form a
14 belief as to where plaintiff resides or plaintiff's allegations that she was prescribed
15 ORTHO EVRA®. Defendants deny the remaining allegations contained in paragraph 99
16 of plaintiffs' FAC.

17 100. Defendants are without knowledge or information sufficient to form a
18 belief as to where plaintiff resides or plaintiff's allegations that she was prescribed
19 ORTHO EVRA®. Defendants deny the remaining allegations contained in paragraph
20 100 of plaintiffs' FAC.

21 101. Defendants are without knowledge or information sufficient to form a
22 belief as to where plaintiff resides or plaintiff's allegations that she was prescribed
23 ORTHO EVRA®. Defendants deny the remaining allegations contained in paragraph
24 101 of plaintiffs' FAC.

25 102. Defendants are without knowledge or information sufficient to form a
26 belief as to where plaintiff resides or plaintiff's allegations that she was prescribed
27 ORTHO EVRA®. Defendants deny the remaining allegations contained in paragraph
28 102 of plaintiffs' FAC.

1 103. Defendants are without knowledge or information sufficient to form a
2 belief as to where plaintiff resides or plaintiff's allegations that she was prescribed
3 ORTHO EVRA®. Defendants deny the remaining allegations contained in paragraph
4 103 of plaintiffs' FAC.

5 104. Defendants are without knowledge or information sufficient to form a
6 belief as to where plaintiff resides or plaintiff's allegations that she was prescribed
7 ORTHO EVRA®. Defendants deny the remaining allegations contained in paragraph
8 104 of plaintiffs' FAC.

9 **ANSWER TO DEFENDANTS**

10 105. Defendants admit that defendant OMP is a Delaware corporation with its
11 principal place of business in New Jersey. Defendants deny the remaining allegations
12 contained in paragraph 105 of plaintiffs' FAC.

13 106. Defendants admit that defendant OMP conducts business in California.
14 Defendants deny the remaining allegations contained in paragraph 106 of plaintiffs' FAC.

15 107. Defendants deny the allegations contained in paragraph 107 of plaintiffs'
16 FAC.

17 108. Defendants are without knowledge or information sufficient to form a
18 belief as to the allegations contained in paragraph 108 of plaintiffs' FAC, and therefore
19 these allegations are denied.

20 109. Defendants admit that defendant OMP manufactured, marketed, promoted,
21 sold and distributed ORTHO EVRA®. Defendants deny the remaining allegations
22 contained in paragraph 109 of plaintiffs' FAC.

23 110. Defendants admit that defendant McKesson is a Delaware corporation with
24 its principal place of business in San Francisco, California. Defendants further admit that
25 defendant McKesson conducts business in California. Defendants deny the remaining
26 allegations contained in paragraph 110 of plaintiffs' FAC.

27 111. Defendants deny the allegations contained in paragraph 111 of plaintiffs'
28 FAC.

112. Defendants are without knowledge or information sufficient to form a belief as to the allegations contained in paragraph 112 of plaintiffs' FAC, and therefore these allegations are denied.

113. Defendants admit that defendant McKesson is a non-exclusive distributor of ORTHO EVRA®. Defendants deny the remaining allegations contained in paragraph 113 of plaintiffs' FAC.

114. Defendants are without knowledge or information sufficient to form a belief as to the allegations contained in paragraph 114 of plaintiffs' FAC.

115. Defendants are without knowledge or information sufficient to form a belief as to the allegations contained in paragraph 115 of plaintiffs' FAC.

116. To the extent that paragraph 116 of plaintiffs' FAC alleges improper conduct on the part of defendants, such allegations are denied.

117. To the extent that paragraph 117 of plaintiffs' FAC alleges improper conduct on the part of defendants, such allegations are denied.

ANSWER TO GENERAL ALLEGATIONS

118. Defendant OMP admits that on the Ortho-McNeil Pharmaceutical, Inc. Web site, it states that: "Ortho-McNeil Pharmaceutical is a pioneer in contraception and a leader in women's health care. Ortho-McNeil offers the broadest range of prescription birth control options..." Defendant OMP further admits that it manufactures and sells ORTHO EVRA®, the first combination transdermal contraceptive patch. Defendants deny the remaining allegations contained in paragraph 118 of plaintiffs' FAC.

119. Defendant OMP admits that ORTHO EVRA® is the first and only once-a-week birth control patch. Defendant OMP further admits that on the ORTHO EVRA® Web site, it states that: "The transdermal -- or 'through the skin' -- weekly birth control patch prevents pregnancy by delivering continuous levels of the hormones norelgestromin and ethinyl estradiol (progestin and estrogen, respectively) through the skin and into the bloodstream." Defendants deny the remaining allegations contained in paragraph 119 of plaintiffs' FAC.

1 120. Defendants admit that a New Drug Application ("NDA") was filed for
2 ORTHO EVRA®, denoted as 21-180, with the FDA in December 2000. Defendants
3 further admit that the FDA Medical Officer's Review for ORTHO EVRA® states what it
4 states. Defendants deny the remaining allegations contained in paragraph 120 of
5 plaintiffs' FAC.

6 121. Defendants admit that the FDA approved the use of ORTHO EVRA® for
7 the prevention of pregnancy in November 2001. Defendants deny the remaining
8 allegations contained in paragraph 121 of plaintiffs' FAC.

9 122. Defendants admit that as with all prescription medicine, adverse events are
10 reported to the FDA by a variety of people and entities. Defendants deny the remaining
11 allegations contained in paragraph 122 of plaintiffs' FAC.

12 123. Defendants admit that the FDA's publications state what they state.
13 Defendants deny the remaining allegations contained in paragraph 123 of plaintiffs' FAC.

14 124. Defendants admit that the November 2005 package insert for ORTHO
15 EVRA® states what it states. To the extent that paragraph 124 of plaintiffs' FAC alleges
16 improper conduct on the part of defendants, such allegations are denied.

17 125. Defendant OMP admits that ORTHO EVRA® is the first and only once-a-
18 week birth control patch. Defendants deny the remaining allegations contained in
19 paragraph 125 of plaintiffs' FAC.

20 126. Defendants deny the allegations contained in paragraph 126 of plaintiffs'
21 FAC.

22 127. Defendants admit that the package insert for ORTHO EVRA® states what
23 it states. To the extent that paragraph 127 of plaintiffs' FAC alleges improper conduct on
24 the part of defendants, such allegations are denied.

25 128. Defendants deny the allegations contained in paragraph 128 of plaintiffs'
26 FAC.

27 129. Defendants state that they were subject only to those duties imposed by
28 applicable law, and deny the allegations contained in paragraph 129 of plaintiffs' FAC to

1 the extent they suggest any different or greater duties. Defendants further deny that they
2 failed to abide by any applicable legal duties.

3 130. Defendants deny the allegations contained in paragraph 130 of plaintiffs'
4 FAC.

5 131. Defendants deny the allegations contained in paragraph 131 of plaintiffs'
6 FAC.

7 132. Defendants deny the allegations contained in paragraph 132 of plaintiffs'
8 FAC.

9 133. Defendants deny the allegations contained in paragraph 133 of plaintiffs'
10 FAC.

11 **ANSWER TO FRAUDULENT CONCEALMENT**

12 134. Defendants deny the allegations contained in paragraph 134 of plaintiffs'
13 FAC.

14 135. Defendants state that they were subject only to those duties imposed by
15 applicable law, and deny the allegations contained in paragraph 135 of plaintiffs' FAC to
16 the extent they suggest any different or greater duties. Defendants further deny that they
17 failed to abide by any applicable legal duties, and deny the remaining allegations
18 contained in this paragraph.

19 **ANSWER TO FIRST CAUSE OF ACTION** 20 **NEGLIGENCE**

21 136. Defendants repeat their answers to the allegations of paragraphs 1 through
22 135 of plaintiffs' FAC as if set forth at length herein.

23 137. Defendants state that they were subject only to those duties imposed by
24 applicable law, and deny the allegations contained in paragraph 137 of the First Cause of
25 Action of plaintiffs' FAC to the extent they suggest any different or greater duties.
26 Defendants further deny that they failed to abide by any applicable legal duties.

27 138. Defendants deny the allegations contained in paragraph 138 of the First
28

1 Cause of Action of plaintiffs' FAC.

2 139. Defendants deny the allegations contained in paragraph 139 of the First
3 Cause of Action of plaintiffs' FAC.

4 140. Defendants deny the allegations contained in paragraph 140 of the First
5 Cause of Action of plaintiffs' FAC.

6 141. Defendants deny the allegations contained in paragraph 141 of the First
7 Cause of Action of plaintiffs' FAC.

8 142. Defendants deny the allegations contained in paragraph 142 of the First
9 Cause of Action of plaintiffs' FAC.

10 143. Defendants deny the allegations contained in paragraph 143 of the First
11 Cause of Action of plaintiffs' FAC.

12 144. Defendants deny the allegation that ORTHO EVRA® is defective, and
13 deny the remaining allegations contained in paragraph 144 of the First Cause of Action of
14 plaintiffs' FAC.

15 145. Defendants deny the allegations contained in paragraph 145 of the First
16 Cause of Action of plaintiffs' FAC.

17 146. Defendants deny the allegations contained in paragraph 146 of the First
18 Cause of Action of plaintiffs' FAC and controvert the prayers for relief set forth in the
19 unnumbered paragraph following paragraph 146.

20
21 **ANSWER TO SECOND CAUSE OF ACTION**
22 **STRICT PRODUCT LIABILITY – FAILURE TO WARN**

23 147. Defendants repeat their answers to the allegations of paragraphs 1 through
24 146 of plaintiffs' FAC as if set forth at length herein.

25 148. Defendants admit that defendant OMP manufactures and supplies ORTHO
26 EVRA®. Defendants deny the remaining allegations contained in paragraph 148 of the
27 Second Cause of Action of plaintiffs' FAC.

28 149. Defendants admit that defendant OMP manufactures and supplies ORTHO

1 EVRA®. Defendants deny the remaining allegations contained in paragraph 149 of the
2 Second Cause of Action of plaintiffs' FAC.

3 150. Defendants deny the allegations contained in paragraph 150 of the Second
4 Cause of Action of plaintiffs' FAC.

5 151. Defendants deny the allegation that ORTHO EVRA® is defective, and
6 deny the remaining allegations contained in paragraph 151 of the Second Cause of Action
7 of plaintiffs' FAC.

8 152. Defendants deny the allegation that ORTHO EVRA® is defective, and
9 deny the remaining allegations contained in paragraph 152 of the Second Cause of Action
10 of plaintiffs' FAC.

11 153. Defendants deny the allegations contained in paragraph 153 of the Second
12 Cause of Action of plaintiffs' FAC.

13 154. Defendants deny the allegation that ORTHO EVRA® is defective, and
14 deny the remaining allegations contained in paragraph 154 of the Second Cause of Action
15 of plaintiffs' FAC.

16 155. Defendants deny the allegation that ORTHO EVRA® is defective, and
17 deny the remaining allegations contained in paragraph 155 of the Second Cause of Action
18 of plaintiffs' FAC.

19 156. Defendants deny the allegations contained in paragraph 156 of the Second
20 Cause of Action of plaintiffs' FAC.

21 157. Defendants deny the allegations contained in paragraph 157 of the Second
22 Cause of Action of plaintiffs' FAC.

23 158. Defendants deny the allegations contained in paragraph 158 of the Second
24 Cause of Action of plaintiffs' FAC.

25 159. Defendants deny the allegations contained in paragraph 159 of the Second
26 Cause of Action of plaintiffs' FAC and controvert the prayers for relief set forth in the
27 unnumbered paragraph following paragraph 159.

28

**ANSWER TO THIRD CAUSE OF ACTION
BREACH OF EXPRESS WARRANTY**

160. Defendants repeat their answers to the allegations of paragraphs 1 through 159 of plaintiffs' FAC as if set forth at length herein.

161. Defendants deny the allegations contained in paragraph 161 of the Third Cause of Action of plaintiffs' FAC.

162. Defendants deny the allegations contained in paragraph 162 of the Third Cause of Action of plaintiffs' FAC.

163. Defendants deny the allegations contained in paragraph 163 of the Third Cause of Action of plaintiffs' FAC.

164. Defendants deny the allegations contained in paragraph 164 of the Third Cause of Action of plaintiffs' FAC.

165. Defendants deny the allegations contained in paragraph 165 of the Third Cause of Action of plaintiffs' FAC.

166. Defendants deny the allegations contained in paragraph 166 of the Third Cause of Action of plaintiffs' FAC.

167. Defendants deny the allegations contained in paragraph 167 of the Third Cause of Action of plaintiffs' FAC.

168. Defendants deny the allegations contained in paragraph 168 of the Third Cause of Action of plaintiffs' FAC.

169. Defendants deny the allegations contained in paragraph 169 of the Third Cause of Action of plaintiffs' FAC and controvert the prayers for relief set forth in the unnumbered paragraph following paragraph 169.

**ANSWER TO FOURTH CAUSE OF ACTION
BREACH OF IMPLIED WARRANTY**

170. Defendants repeat their answers to the allegations of paragraphs 1 through 169 of plaintiffs' FAC as if set forth at length herein.

171. Defendants admit that defendant OMP marketed, sold and distributed ORTHO EVRA®, which is used for the prevention of pregnancy. Defendants further admit that defendant McKesson is a non-exclusive distributor of ORTHO EVRA®, and deny that defendant McKesson marketed or sold ORTHO EVRA®. The remainder of paragraph 171 of the Fourth Cause of Action of plaintiffs' FAC contains a legal conclusion to which no response is required.

172. Paragraph 172 of the Fourth Cause of Action of plaintiffs' FAC contains legal conclusions to which no response is required.

173. Defendants are without knowledge or information sufficient to form a belief as to the allegations contained in paragraph 173 of the Fourth Cause of Action of plaintiffs' FAC, and therefore these allegations are denied.

174. Defendants deny the allegations contained in paragraph 174 of the Fourth Cause of Action of plaintiffs' FAC.

175. Defendants deny the allegations contained in paragraph 175 of the Fourth Cause of Action of plaintiffs' FAC.

176. Defendants deny the allegations contained in paragraph 176 of the Fourth Cause of Action of plaintiffs' FAC.

177. Defendants deny the allegations contained in paragraph 177 of the Fourth Cause of Action of plaintiffs' FAC and controvert the prayers for relief set forth in the unnumbered paragraph following paragraph 177.

ANSWER TO FIFTH CAUSE OF ACTION NEGLIGENT MISREPRESENTATION

178. Defendants repeat their answers to the allegations of paragraphs 1 through 177 of plaintiffs' FAC as if set forth at length herein.

179. Defendants admit that defendant OMP manufactures, markets, promotes, and sells ORTHO EVRA®. Defendants further state that they were subject only to those duties imposed by applicable law, and deny the allegations contained in this paragraph to

1 the extent they suggest any different or greater duties. Defendants further deny that they
 2 failed to abide by any applicable legal duties, and deny the remaining allegations
 3 contained in paragraph 179 of the Fifth Cause of Action of plaintiffs' FAC.

4 180. Defendants deny the allegations contained in paragraph 180 of the Fifth
 5 Cause of Action of plaintiffs' FAC.

6 181. Defendants deny the allegations contained in paragraph 181 of the Fifth
 7 Cause of Action of plaintiffs' FAC.

8 182. Defendants deny the allegations contained in paragraph 182 of the Fifth
 9 Cause of Action of plaintiffs' FAC.

10 183. Defendants deny the allegations contained in paragraph 183 of the Fifth
 11 Cause of Action of plaintiffs' FAC.

12 184. Defendants deny the allegations contained in paragraph 184 of the Fifth
 13 Cause of Action of plaintiffs' FAC and controvert the prayers for relief set forth in the
 14 unnumbered paragraph following paragraph 184.

15
 16 **ANSWER TO SIXTH CAUSE OF ACTION**
 17 **FRAUD**

18 185. Defendants repeat their answers to the allegations of paragraphs 1 through
 19 184 of plaintiffs' FAC as if set forth at length herein.

20 186. Defendants admit that defendant OMP manufactures, markets, promotes,
 21 and sells ORTHO EVRA®. Defendants further state that they were subject only to those
 22 duties imposed by applicable law, and deny the allegations contained in this paragraph to
 23 the extent they suggest any different or greater duties. Defendants further deny that they
 24 failed to abide by any applicable legal duties, and deny the remaining allegations
 25 contained in paragraph 186 of the Sixth Cause of Action of plaintiffs' FAC.

26 187. Defendants deny the allegations contained in paragraph 187 of the Sixth
 27 Cause of Action of plaintiffs' FAC.

28 188. Defendants deny the allegations contained in paragraph 188 of the Sixth

1 Cause of Action of plaintiffs' FAC.

2 189. Defendants deny the allegations contained in paragraph 189 of the Sixth
3 Cause of Action of plaintiffs' FAC.

4 190. Defendants deny the allegations contained in paragraph 190 of the Sixth
5 Cause of Action of plaintiffs' FAC.

6 191. Defendants deny the allegations contained in paragraph 191 of the Sixth
7 Cause of Action of plaintiffs' FAC.

8 192. Defendants deny the allegations contained in paragraph 192 of the Sixth
9 Cause of Action of plaintiffs' FAC.

10 193. Defendants deny the allegations contained in paragraph 193 of the Sixth
11 Cause of Action of plaintiffs' FAC.

12 194. Defendants are without knowledge or information sufficient to form a
13 belief as to plaintiffs' states of mind. Defendants deny the remaining allegations
14 contained in paragraph 194 of the Sixth Cause of Action of plaintiffs' FAC.

15 195. Defendants deny the allegations contained in paragraph 195 of the Sixth
16 Cause of Action of plaintiffs' FAC.

17 196. Defendants deny the allegations contained in paragraph 196 of the Sixth
18 Cause of Action of plaintiffs' FAC.

19 197. Defendants deny the allegations contained in paragraph 197 of the Sixth
20 Cause of Action of plaintiffs' FAC.

21 198. Defendants deny the allegations contained in paragraph 198 of the Sixth
22 Cause of Action of plaintiffs' FAC and controvert the prayers for relief set forth in the
23 unnumbered paragraph following paragraph 198.

24 **FIRST AFFIRMATIVE DEFENSE**

25 Plaintiffs' FAC fails to state a claim against Defendants upon which relief may be
26 granted.

27 **SECOND AFFIRMATIVE DEFENSE**

Venue is improper in this court.

THIRD AFFIRMATIVE DEFENSE

Plaintiffs are fraudulently joined and/or misjoined, and the court should sever Plaintiffs' claims and/or enter other appropriate orders to avoid prejudice, unfairness, hardship, delay, and undue expense and to promote convenience and expedience.

FOURTH AFFIRMATIVE DEFENSE

Plaintiffs' claims are barred, in whole or in part, to the extent certain Plaintiffs have asserted duplicative claims in one or more other actions pending against some or all of the same defendants.

FIFTH AFFIRMATIVE DEFENSE

Plaintiffs' claims are barred by the applicable statute of limitations, statute of repose and/or by the equitable doctrines of laches and estoppel.

SIXTH AFFIRMATIVE DEFENSE

Plaintiffs' claims are barred by the doctrines of informed consent, release and waiver.

SEVENTH AFFIRMATIVE DEFENSE

Plaintiffs' claims are barred because the alleged damages, if any are proven, were not proximately caused by any act or omission of any of the Defendants.

EIGHTH AFFIRMATIVE DEFENSE

If Plaintiffs suffered any of the injuries, losses and damages alleged, then said injuries, losses and damages were a direct and proximate result of a responsible, superseding, and/or intervening cause.

NINTH AFFIRMATIVE DEFENSE

Defendants state that if Plaintiffs have suffered any of the injuries, losses and damages alleged, then said injuries, losses and damages were due to an allergic,

1 idiosyncratic or idiopathic reaction to the product at issue in this case, or by an
2 unforeseeable illness, unavoidable accident or preexisting condition, without any
3 negligence and culpable conduct by Defendants.

4 **TENTH AFFIRMATIVE DEFENSE**

5 Plaintiffs' injuries and damages, if any, were caused in whole or in part by the acts
6 (wrongful or otherwise), negligence, sole fault, misuse, abuse, modification, alteration,
7 omission or fault of one or more persons or entities over whom Defendants exercised no
8 control and for whom Defendants are not legally responsible, including, without
9 limitation, Plaintiffs.

10 **ELEVENTH AFFIRMATIVE DEFENSE**

11 Plaintiffs failed to exercise reasonable care and diligence to mitigate injuries and
12 damages, if any.

13 **TWELFTH AFFIRMATIVE DEFENSE**

14 Plaintiffs' claims are barred by the "state of the art" and "state of scientific
15 knowledge" defenses.

16 **THIRTEENTH AFFIRMATIVE DEFENSE**

17 Plaintiffs' claims are barred by the Learned Intermediary Doctrine.

18 **FOURTEENTH AFFIRMATIVE DEFENSE**

19 The product at issue in this case falls under the auspices of the Food, Drug and
20 Cosmetic Act and regulations promulgated by the Federal Food & Drug Administration,
21 and therefore, Federal law preempts Plaintiffs' claims. *See*, 21 U.S.C. § 301 *et. seq.* *See*
22 *also*, 71 Fed. Reg. 3922 (January 24, 2006).

23 **FIFTEENTH AFFIRMATIVE DEFENSE**

24 Defendants did not make to Plaintiffs nor did they breach any express or implied
25 warranties and/or breach any warranties created by law. To the extent that Plaintiffs rely
26 on any theory of breach of warranty, such claims are barred by applicable law, and for
27
28

1 lack of privity with Defendants and/or for failure of Plaintiffs, or Plaintiffs'
 2 representatives, to give timely notice to Defendants of any alleged breach of warranty.
 3 Plaintiffs did not rely on any alleged warranty. Defendants further specifically plead as
 4 to any breach of warranty claim all affirmative defenses under the Uniform Commercial
 5 Code existing and which may arise in the future, as enacted in the State of California, and
 6 any other state whose law is deemed to apply in this case.

7 **SIXTEENTH AFFIRMATIVE DEFENSE**

8 Plaintiffs' claims are barred by comments j and k to Section 402A of the
 9 Restatement (Second) of Torts.

10 **SEVENTEENTH AFFIRMATIVE DEFENSE**

11 Plaintiffs' claims of product defects are barred by Section 2, 4, and 6(c) and (d) of
 12 the Restatement (Third) of Torts: Products Liability.

13 **EIGHTEENTH AFFIRMATIVE DEFENSE**

14 Plaintiffs' product liability claims are barred because the benefits of the relevant
 15 product outweighed its risks.

16 **NINETEENTH AFFIRMATIVE DEFENSE**

17 Plaintiffs' claims are barred in whole or part because the product at issue was at all
 18 times properly prepared, packaged, and distributed, and was not defective or
 19 unreasonably dangerous.

20 **TWENTIETH AFFIRMATIVE DEFENSE**

21 Any imposition of punitive damages in this case against Defendants is barred to
 22 the extent that the manner in which such punitive damages are calculated violates the
 23 Constitution of the United States or the Constitution of the State of California.

24 **TWENTY-FIRST AFFIRMATIVE DEFENSE**

25 Any award of punitive damages in this case against Defendants is barred to the
 26 extent that the amount of such an award violates the Constitution of the United States or
 27

1 the Constitution of the State of California.

2 **TWENTY-SECOND AFFIRMATIVE DEFENSE**

3 Plaintiffs have failed to plead fraud with specificity.

4 **TWENTY-THIRD AFFIRMATIVE DEFENSE**

5 Defendants are entitled to a setoff for all amounts paid, payable by or available
6 from collateral sources.

7 **TWENTY-FOURTH AFFIRMATIVE DEFENSE**

8 The FAC fails to state a cause of action against Defendants because there is no
9 private right of action under the applicable federal law. To the extent Plaintiffs' claims
10 are based on alleged misrepresentations or omissions made to FDA, such claims are
11 barred pursuant to Buckman v. Plaintiffs' Legal Community, 531 U.S. 341 (2001).

12 **TWENTY-FIFTH AFFIRMATIVE DEFENSE**

13 Plaintiffs knowingly and voluntarily assumed any and all risks associated with the
14 use of the product at issue, barring in whole or in part the damages Plaintiffs seek to
15 recover.

16 **TWENTY-SIXTH AFFIRMATIVE DEFENSE**

17 In the event Defendants, or any of them, are held liable to Plaintiffs, or any of them,
18 which liability is expressly denied, or a settlement of judgment against Defendants, or any of
19 them, is reached, Defendants request an apportionment of fault be made as permitted by Li v.
20 Yellow Cab Company, 13 Cal.3d 804 (1975) and American Motorcycle Association v. Superior
21 Court, 20 Cal.3d 578 (1987) and a judgment and declaration of indemnification and contribution
22 be entered against all other persons and entities in accordance with that apportionment of fault.

23 **TWENTY-SEVENTH AFFIRMATIVE DEFENSE**

24 The amount of any award on behalf of plaintiffs, or any of them, for non-economic
25 loss must be allocated according to the provisions of California Civil Code Section
26 1431.2 ("Proposition 51").
27
28

TWENTY- EIGHTH AFFIRMATIVE DEFENSE

Defendants specifically reserve the right to amend their Answer by adding defenses, counterclaims, cross claims or by instituting third party actions as additional facts are obtained.


WHEREFORE, having fully answered, Defendants specifically controvert Plaintiffs' Prayer for Relief including Paragraphs (1)-(6).

JURY DEMAND

Defendants hereby demand a trial by jury of all the facts and issues in this case pursuant to Federal Rule of Civil Procedure 38(b).

Dated: August 2, 2007

DRINKER BIDDLE & REATH LLP


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INC. and MCKESSON CORPORATION